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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026 (REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.

f/k/a General Motors Corporation, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

October 28, 2010

3:05 PM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

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TELEPHONE CONFERENCE re Letter Dated October 28, 2010 from
James L. Bromley to Judge Gerber

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: This is Robert Gerber. I would like to get appearances from those folks who think they're likely to want to speak this afternoon. And then I'll deal with the substantive matters incident to this request for a conference. As I believe you all know, after I read the submissions, I thought it appropriate that this call be on the record. And therefore, we have our recording equipment running now.

I have letters from each of Cleary and Jones Day. Who would like to begin with the appearances first?

MR. BROMLEY: Good afternoon, Your Honor. Thanks. This is James Bromley from Cleary Gottlieb in behalf of the UAW.

THE COURT: Okay, Mr. Bromley.

MS. LENNOX: Good afternoon, Your Honor. This is Heather Lennox of Jones Day on behalf of General Motors LLC for which we refer to as New GM.

THE COURT: Right. Okay. And I assume the two of you folks will be the principal spokespeople on this conference?

MS. LENNOX: Yes, sir.

THE COURT: Okay.

MR. BROMLEY: That's correct.

THE COURT: Each of the letters that I got seems to make various requests from me. Is there a recommended order in

1 terms of who I should allow to be heard first with the
2 understanding that each of you guys is going to get the
3 opportunity to respond and reply and, if need be, surreply?

4 MS. LENNOX: Your Honor, this is Ms. Lennox. Since
5 Mr. Bromley requested the conference that is apparently
6 requesting a delay, I would defer to him to go first.

7 THE COURT: All right. Mr. Bromley?

8 MR. BROMLEY: Thank you, Your Honor. And thank you,
9 Ms. Lennox. I appreciate that.

10 Your Honor, we have a bit of an issue here because we
11 have two pending actions dealing with essentially the same set
12 of fact circumstances. We have a complaint that has been filed
13 in the Eastern District of Michigan before Judge Cohn. That
14 complaint was filed in April of this year. Through agreement
15 of the parties --

16 THE COURT: Pause, please, Mr. Bromley. I'm having
17 some problems hearing you.

18 MR. BROMLEY: I apologize, Your Honor. I'll speak
19 louder.

20 THE COURT: Yes. Would you, please? And tell me, in
21 particular, when the complaint was filed?

22 MR. BROMLEY: Yes, Your Honor. There is a -- as I
23 mentioned, there is a complaint that has been filed in the
24 Eastern District of Michigan before Judge Cohn. It was filed
25 on April 6th, I believe, of this year. It was served in

1 September. And the complaint has been answered by New GM. And
2 a motion to strike certain affirmative defenses has also been
3 filed by the UAW before Judge Cohn. There is a status
4 conference in that case scheduled for the 3rd of November. And
5 the defendant has, I think, until the 4th of December -- I
6 mean, November, excuse me, to respond to the motion to strike.

7 Now, I should say that while the plaintiffs filed in
8 April, the issue underlying this was first joined in October of
9 2009 when the UAW made a demand on New GM to pay certain
10 amounts under what is known as the 2007 memorandum of
11 understanding, or MOU. That demand was made immediately upon
12 the confirmation of the Delphi plan of reorganization and, in a
13 letter dated November 11th, 2009 to New GM, denied any
14 responsibility for making the payments that we claim are
15 required. Now the MOU, this from 2007, relate to obligations
16 making payment of 450 million dollars, a very substantial sum,
17 into what was known in -- by various terms as old VEBA, the DC
18 VEBA, the dental VEBA or the existing external VEBA. All those
19 are set out on terms and appear in various forms in different
20 documents. So they are all the same -- refer to the same
21 vehicle.

22 So the UAW raised the issue in October, made demand
23 of payment in October of 2009. The General Motors denied
24 responsibility in November and a complaint was filed in April
25 of 2010. The complaint was served in September of 2010 and

1 answered by New GM just this month in October.

2 THE COURT: Pause, please, Mr. Bromley. Delays in
3 service of process when you can't find the defendant are fairly
4 common. But when you told me there was an apparent delay
5 between April and September in service of New GM whose address
6 I had always understood to be the one that you listed in the
7 complaint. Was there a reason for the delay in service?

8 MR. BROMLEY: Yes, Your Honor. The parties were
9 attempting to work this out and the delay in service was an
10 agreement among the parties.

11 THE COURT: All right. Continue, please.

12 MR. BROMLEY: And so, Your Honor, we did serve the
13 complaint in September and it has been answered. The present
14 motion brought by New General Motors was filed just a week ago
15 and we have presently scheduled an objection deadline of the
16 2nd of November and a scheduled hearing date of the 9th of
17 November. And it is the view of the UAW that this Court should
18 hold off on dealing with this motion in deference to the
19 existing action before Judge Cohn.

20 THE COURT: All right. Ms. Lennox?

21 MR. BROMLEY: We understand that General Motors has
22 filed a motion and claims that there are exclusive jurisdiction
23 arguments relating to the sale order that approve the sale to
24 New GM. But I think they miss the point which is that the
25 cause of action in Michigan does not relate to the sale order.

1 What it relates to is an assumed contract between two nondebtor
2 parties and an obligation under that contract that is not
3 within the exclusive jurisdiction of this Court.

4 THE COURT: Well, that's the matter to be decided,
5 isn't it, Mr. Bromley?

6 MR. BROMLEY: Yes, it is, but that certainly is the
7 UAW's position. And we believe that that issue has been joined
8 for Judge Cohn and that it should be allowed to proceed in that
9 way.

10 THE COURT: Well, that's one of the reasons why I
11 have problems with each of your positions, folks. But is there
12 anything else that I should hear from you now, Mr. Bromley,
13 before I hear from Ms. Lennox?

14 MR. BROMLEY: At this point, Your Honor, I think
15 that's what we have to say to start. But we certainly would
16 reserve our right to reply to Ms. Lennox.

17 THE COURT: I understand. All right. Ms. Lennox?

18 MS. LENNOX: Thank you, Your Honor. Mr. Bromley got
19 the timing of the parties' interaction generally correct. The
20 complaint was filed in April of 2010. The parties did agree
21 and stipulated that service would be delayed until October 4th
22 of this year while the parties attempted to work out their
23 issues with respect to this dispute. New GM made it perfectly
24 clear to the UAW throughout these discussions that they
25 believed that the UAW retiree settlement agreement that was

1 approved in this Court's sale order governed this dispute. And
2 so certainly that was not a surprise to the UAW. The parties
3 had settlement discussions and when the settlement discussions
4 seemed to break down, the UAW served the complaint on September
5 17th of this year. Once it became evident that resolutions of
6 the dispute would not be forthcoming then New GM looked at the
7 provisions of the UAW retiree settlement agreement and
8 immediately sent the notice of dispute required under paragraph
9 26 of that agreement and it was required to wait twenty-one
10 days for the UAW to respond. On the twenty-first day, the UAW
11 did respond with kind of the same arguments the parties had
12 discussed in the past. And so, on the very next day, New GM
13 filed the motion that's before Your Honor.

14 I would say to Your Honor that while this is pending
15 because New GM had taken quite strong positions that this
16 matter is governed by the UAW retiree settlement agreement, New
17 GM had asked the UAW if it could have an extension to file an
18 answer in the Michigan district court because it believed quite
19 clearly that Your Honor has exclusive jurisdiction over this
20 issue. And that request was denied. So we were compelled to
21 file an answer so we wouldn't lose any rights in the Eastern
22 District of Michigan. And we filed this motion just as soon as
23 we could in front of this Court.

24 We do believe that this dispute is governed by the
25 UAW retiree settlement agreement by what happens in the

1 evidentiary record at the sale hearing. And therefore,
2 pursuant to paragraph 71 of the sale order and paragraph 26 of
3 the UAW retiree settlement agreement, this Court has exclusive
4 jurisdiction over this matter.

5 THE COURT: Pause, please, Ms. Lennox. Aren't you
6 asking me to do the exact same thing that Mr. Bromley and that
7 I criticized him for? You're asking me to assume the fact to
8 be decided?

9 MS. LENNOX: Well, Your Honor, I'm not sure that we
10 need to assume facts that aren't already quite clearly laid out
11 in the agreements that Your Honor approved. The UAW retiree
12 settlement agreement -- the issue, as Mr. Bromley framed it, is
13 about what payments need to be made by New GM to the new
14 VEBA and --

15 THE COURT: I had understood subject --

16 MS. LENNOX: -- was covered --

17 THE COURT: No. Ms. Lennox, you can't interrupt me.

18 MS. LENNOX: I'm sorry, Your Honor.

19 THE COURT: I had understood that subject to your
20 rights to be heard that the issue is to the extent of my
21 exclusive jurisdiction putting aside whether I later decide if
22 I do have exclusive jurisdiction to invoke it or to abstain, is
23 the extent to which one or another of the orders or documents
24 whose construction I would have exclusive jurisdiction over is
25 either dispositive or material to this controversy. Do you

1 think that's an inappropriate way of articulating the relevant
2 issue as to my exclusive jurisdiction?

3 MS. LENNOX: No. I think that's appropriate, Your
4 Honor.

5 THE COURT: Okay. Now I will need, at some point in
6 this call if you agree or after appropriate due process if you
7 can't, to get my arms around the extent to which the
8 controversy requires me to look at documents whose
9 interpretation is within my exclusive jurisdiction. So if you
10 weren't going to cover that further now, you can. But I'm also
11 going to need from Mr. Bromley his views as to that because it
12 appears to me that this thing may need to be sliced and diced
13 in a couple of phases. First, to determine whether I have
14 exclusive jurisdiction, as a 1(a), I'll call it; second,
15 assuming that I do, whether I want to keep or invoke my
16 exclusive jurisdiction or abstain in favor of the federal
17 district court in the Eastern District of Michigan; and for
18 either me or Judge Cohn, whoever the ultimate adjudicator turns
19 out to be, a decision on the merits would need to be made. I'd
20 like you to address that. And what I need to do to enable each
21 of you guys to do your jobs to tee these matters up for
22 appropriate judicial determination -- one thing that troubles
23 me, folks, and I attribute no blame to either of you but it's a
24 problem that, from my perspective, I think needs to be
25 addressed is after you guys laudably, in my view, took six

1 months to try to settle the matter, now everything is going as
2 if it's a preliminary injunction motion that has to be decided
3 tomorrow on issues that have the potential of being a 450
4 million buck spread between the two of you and which requires
5 thoughtful adjudication wherever it's adjudicated.

6 So give me your thoughts on that, Ms. Lennox. And
7 then I'm going to ask more from Mr. Bromley. And I'm going to
8 then give you a chance to be heard after he has another chance
9 to be heard.

10 MS. LENNOX: Thank you, Your Honor. I think that
11 Your Honor's suggesting of perhaps dividing the issues into
12 jurisdiction and some merits certainly has some merit, Your
13 Honor. Our view on exclusive jurisdiction is that the dispute
14 between the parties are governed by Your Honor's sale order and
15 by the UAW retiree settlement agreement. To the extent that
16 the 2007 MOU that Mr. Bromley referenced is an assumed UAW CEA
17 in the purchase agreement between Old GM and New GM, that would
18 also fall within Your Honor's exclusive jurisdiction.

19 THE COURT: Pause, please. Did you say the 2007
20 agreement?

21 MS. LENNOX: Yes, Your Honor.

22 THE COURT: Help me understand that part of it
23 because I thought the UAW's position is they have rights under
24 the 2007 agreement which they contend survived. And your
25 position is that the 2009 agreement is kind of like a defense

1 or a termination of the 2007 agreement.

2 MS. LENNOX: Well, but there are items in the 2007
3 agreement, Your Honor, that went beyond this issue. The 2007
4 agreement included things like what pension obligations -- at
5 the time that agreement, Your Honor, was made between Old GM
6 and Delphi and the UAW. There are many other matters in that
7 agreement other than the matter that is -- the piece of that
8 agreement that is before Your Honor today. For example, Old GM
9 had agreed to bring some of the Delphi retirees into its
10 pension plan and that arrangement carried through into this
11 bankruptcy.

12 The UAW has alleged in this complaint that the 2007
13 MOU was therefore a collective bargaining agreement that was
14 assumed and assigned to New GM.

15 THE COURT: Okay. Let me -- pause, please, Ms.
16 Lennox, because I want to make sure I'm keeping up with you.
17 You said that the 2007 agreement was assumed and assigned from
18 Old GM to New GM but the parties differ on the extent to which
19 it was modified by 2009 agreement?

20 MS. LENNOX: That's, I think, certainly the UAW's
21 view as to how it was modified. Our view also is to whether
22 conditions were satisfied is also an issue.

23 THE COURT: Right. Okay. Continue, please.

24 MS. LENNOX: So that being the case, that certainly
25 is another matter with respect to the sale agreement that is

1 within this Court's exclusive jurisdiction. And so, we
2 believe, Your Honor, that it's appropriate that Your Honor
3 exercise exclusive jurisdiction over this matter.

4 THE COURT: Okay. Further thoughts before I give Mr.
5 Bromley a chance to answer the same questions that I put to
6 you, Ms. Lennox?

7 MS. LENNOX: No, Your Honor.

8 THE COURT: Okay. Before we go back to Mr. Bromley,
9 confirming and amplifying on something that I thought I saw in
10 the Jones Day letter although I'm not sure if you were the
11 signer of that or whether one of your colleagues was. Hang on
12 a second.

13 MS. LENNOX: I signed that letter, Your Honor.

14 THE COURT: Oh, you did. Forgive me. I take it
15 you're cool -- although I guess I need to get the same answer
16 from Mr. Bromley -- to two adjustments in the briefing
17 schedules as to the issues that you have against each other.
18 One would be slowing things down in this Court to give Cleary a
19 little due process in the issues before me if there is an
20 agreement to disagree on my exclusive jurisdiction and slowing
21 things down before Judge Cohn in the Eastern District of
22 Michigan to allow me to make this threshold determination.

23 MS. LENNOX: Yes, Your Honor, that's correct. We
24 have no problem to an amendment to our briefing schedule before
25 Your Honor so long as the status quo is postponed in Michigan

1 as Your Honor articulated.

2 THE COURT: Fair enough. Back to you, please.

3 MR. BROMLEY: Thank you, Your Honor. Let me
4 address -- go back to the question that you posed to Ms. Lennox
5 which is, is it appropriate or reasonable to think that this
6 says something that could be sliced and diced, I think as you
7 said. Thirdly, Your Honor, we do view that if this is going to
8 go forward before Your Honor that there does need to be an
9 adequate opportunity to deal with these issues. We do think
10 they are material. The amounts at issue are substantial. And
11 the parties here are engaged in a familial relationship.
12 Obviously, the UAW and New General Motors are -- work hand in
13 glove every day on lots of issues. But the -- this is
14 something that we do need to address.

15 The question of whether Your Honor has exclusive
16 jurisdiction we do think is worth separate briefing. The
17 documents that Ms. Lennox references both in her motion and in
18 her letter are, I think, fair to describe as extraordinarily
19 complicated in many ways. And the issues at hand relate to a
20 number of documents. And the question, we think, actually
21 relates to a single document as to which the Court does not
22 have exclusive jurisdiction which is the Delphi 2007 MOU. But
23 even if that is at issue, it is a document that is fifty pages
24 long. There is a settlement agreement that is fifty pages
25 long. There's a Thatcher purchase agreement over a hundred

1 pages. The Delphi plan of reorganization itself is implicated.
2 The retiree settlement agreement of 2009 itself is another
3 thirty pages; sale order, another fifty pages. These are
4 substantial documents that we don't believe are susceptible to
5 immediate disposition if the Court is inclined to go forward on
6 that basis.

7 But even leaving the documents aside, we do believe
8 that there are threshold issues relating to jurisdiction. We
9 have raised in our letter in the footnote the first-filed
10 doctrine which we believe is implicated by the pre-existing
11 action in Michigan.

12 THE COURT: You can brief that, Mr. Bromley, but do
13 you seriously believe that first to file is a defense to an
14 exclusive jurisdiction provision?

15 MR. BROMLEY: (Indiscernible)

16 THE COURT: I'm sorry. I couldn't hear that.

17 MR. BROMLEY: Well -- I'm sorry, Your Honor. That
18 was not -- the -- I think that the question has to be fairly
19 put in the following way. The action in Michigan relates to
20 the 2007 MOU and whether or not New GM has an obligation to
21 perform under it. Now the defense of that, an affirmative
22 defense, is that it is somehow foreclosed by the exclusive
23 jurisdiction provisions of the sale order. We believe it is
24 not and so are argued that the action in Michigan on the
25 underlying merits is on an agreement as to which this Court

1 does not have exclusive jurisdiction. And I think the first
2 issue is which Court should control and to avoid the
3 possibility of inconsistent decisions and to avoid the
4 possibility of the wasting of judicial resources.

5 So from our perspective, we do think it is
6 appropriate to try to deal with it, first, as to which Court
7 should be handling it and only then go to the merits.

8 And as to the timing issue that you have raised, Your
9 Honor, we, too, are bothered by the idea that this dispute has
10 been outstanding between the parties since October of 2009.
11 And with respect to the complaint since April, there is no
12 emergency here that requires any compromise of a party's
13 ability to fully brief this, to have discovery, if necessary,
14 and to have a full and adequate hearing. There's a -- the fact
15 is the demand for payment is a demand being made by the UAW.
16 That demand has been refused. So there's nothing pending.
17 There's no emergency. And so our view is that they should be
18 dealt with in an appropriate time frame to recognize the
19 magnitude of the issues and allow the parties to have their
20 full day in court, so to speak.

21 THE COURT: All right. And I take it a corollary of
22 that is that you agree with Ms. Lennox that if I determine that
23 I need to determine whether I have exclusive jurisdiction,
24 you're content with putting things on hold in the Eastern
25 District of Michigan until we determine the phase I issues as I

1 articulated them before.

2 MR. BROMLEY: Well, Your Honor, I have to say that we
3 are bothered by that. We do believe that there's -- well,
4 there is a status conference next Wednesday. And there is a
5 timeline for filing the responsive papers to the motion to
6 strike.

7 THE COURT: Well, I think I could pick up the phone
8 with Mr. Cohn -- Judge Cohen, excuse me -- and say listen, I've
9 got a threshold issue. I don't want to put the UAW in contempt
10 but I've got to find out whether what they did is violative of
11 my order. Do you think he'd give me a hard time about kicking
12 a status conference?

13 MR. BROMLEY: Well, Your Honor, I -- certainly, if
14 you place it that way, I suspect that the status conference
15 issue -- I suspect that judicial courtesy would dictate that he
16 would certainly entertain that. So there is the deadline for
17 filing the response briefing by Thursday.

18 THE COURT: Well, Mr. Bromley, I've had issues of
19 dueling jurisdiction before. I've also had lawyers try to give
20 me this first-to-file argument. I think I had this exact issue
21 in Adelpia when a bunch of people tried to enjoin the Time
22 Warner sale by bringing an antitrust suit in Minnesota a week
23 or two before an eighteen billion dollar deal was supposed to
24 go through. And I called up my counterpart in Minnesota. I'm
25 not sure if "counterpart" is the perfect word because he was a

1 district judge and I'm just a bankruptcy judge. But in about
2 eight seconds, we agreed that I wouldn't step on his toes and
3 we'd try to work cooperatively. Do you have a problem with
4 that?

5 MR. BROMLEY: Your Honor, we certainly understand the
6 need for judicial cooperation. And we're trying to balance the
7 issues with respect to both sides. And I understand the
8 suggestion that you're making. I would have to -- I don't have
9 my client here in the room with me. I have to discuss it with
10 them. But I can do so very quickly.

11 THE COURT: Well, you may want to let me know whether
12 you consent because I don't want to be in a position to enjoin
13 you in the next forty-eight hours, Mr. Bromley.

14 It appears to me that both of you guys are
15 procedurally overreaching when there is a serious underlying
16 issue here. This is much more difficult to determine than
17 those dealership issues where the dealers were plainly subject
18 to the earlier orders in the General Motors case. And they
19 tried to get a second bite at the apple or a third, if you
20 count their arbitrations, by going elsewhere. If you are
21 wrong, Mr. Bromley, you're guilty of contempt. If you're
22 right, then New GM is harassing you. The converse is equally
23 true.

24 Now, I don't want to hold either side in contempt.
25 And I recognize as well or better than the two of you guys that

1 you are in a familial relationship as you articulated it, Mr.
2 Bromley. And I don't think the parties want to be acting like
3 jerks here. We got to tee this up for a judicial determination
4 as to whether I have exclusive jurisdiction. And if I do,
5 whether it's most sensible for me to exercise it or to put a
6 matter that I may not bring anything special to the table on in
7 the hands of the district judge even if I have exclusive
8 jurisdiction, those not being identical issues.

9 Now, my tentative, subject to both sides' rights to
10 be heard, is to slow this down on both fronts to tee up the
11 jurisdictional issue so I know whether or not I have exclusive
12 jurisdiction. And if either side wants me to abstain, assuming
13 I do, whether I should abstain or not. I don't want either
14 side putting a gun to the head of the other that's going to
15 deny its substantive rights. Or, when you're talking about
16 procedural rights of this characters, they have substantive
17 effect. So, as I said, my tentative is to slow this down, to
18 direct you guys to come up with a briefing schedule on whether
19 or not I have exclusive jurisdiction and whether I should
20 exercise it.

21 Then either Judge Cohn or I will decide the merits
22 depending on the outcome to the first two questions. If it is
23 contended by either side that discovery is necessary to tee up
24 these issues on the merits or on the threshold procedural
25 issues, my tentative, subject to your respective rights to be

1 heard, is to give each of you whatever discovery either side
2 wants assuming it's otherwise reasonable because whether I
3 decide it or Judge Cohn decides it, it's going to be necessary
4 at some point in time. And I don't know at this juncture, but
5 I'll certainly invite you to give me your views, as to whether
6 any discovery is necessary on the threshold issues or not. But
7 if and to the extent they are, on a 450 million buck matter,
8 I'm of the view to give you that as well.

9 Now, Mr. Bromley, I'm not looking for you to play
10 Let's Make a Deal, but I want you to respond on the merits to
11 my approach from a case management perspective.

12 MR. BROMLEY: Thank you, Your Honor. From a case
13 management perspective, I do believe that this is a matter of
14 magnitude that requires appropriate briefing. I do believe
15 that if we are able to put both matters in a half suspended
16 automation that we should be able to reach an agreement on a
17 briefing schedule as well as whether or not any discovery is
18 required. We certainly have historically had a very
19 cooperative relationship with counsel to both Old GM and New GM
20 and we believe that we can behave in the manners as to which
21 you expect, Your Honor, in making sure that we accommodate the
22 interests of the parties and the Court and give proper
23 deference to the magnitude of the issue.

24 So, from a procedural perspective, I do agree -- or a
25 case management perspective, if you will, that the proposal you

1 made does make sense. Like I said, I do need to contact my
2 client directly which we are in the process of doing in the
3 other room. But I would like to defer for the moment that they
4 may hear Ms. Lennox's reaction to your proposal.

5 THE COURT: All right. Ms. Lennox?

6 MS. LENNOX: Thank you, Mr. Bromley. Your Honor, I
7 think we've articulated before that we think Your Honor's
8 approach is sensible and makes sense. This certainly is an
9 issue of some magnitude and Mr. Bromley is correct. We've
10 always had very cordial working relationships and I would
11 expect that to continue.

12 I think our initial view on certainly the first
13 matter about whether there's exclusive jurisdiction and that
14 matter would not require discovery though we'd certainly be
15 happy to talk that over with Mr. Bromley and come up with a
16 briefing schedule in answer to that question as well, Your
17 Honor.

18 THE COURT: Okay. Now I'm sure you'll understand.
19 I'm loathe to tell Judge Cohn what to do. The way that I do
20 things like this is if somebody puts -- requires me to, I
21 enjoin the parties and not the judge. But what I would much
22 prefer to do as my questions to mainly Mr. Bromley implied is
23 to get your consent for the avoidance of doubt so I can pick up
24 the phone to Judge Cohn and work with him so that I'm
25 respecting his jurisdiction and he's respecting mine. I think

1 that's especially so because I think the issue, as you may know
2 from the Rally transcript, is not whether the Michigan district
3 court has subject matter jurisdiction of this controversy. I
4 think it plainly does. It's a classic 1331 issue. But the
5 issue for -- that is ultimately dispositive is not whether it
6 has subject matter jurisdiction because, as I noted in the
7 Rally thing, state courts have subject matter jurisdiction in
8 over practically everything that comes through their doors, but
9 whether the forum that doesn't have exclusive jurisdiction has
10 to stay its hand in exercising its subject matter jurisdiction
11 in deference to the earlier exclusive jurisdiction provision
12 which, I think, even the Supreme Court has stated is something
13 that is worthy of respect.

14 So, am I correct, Ms. Lennox, that you don't object
15 to me conferring with Judge Cohn also?

16 MS. LENNOX: No, Your Honor. We do not object to
17 that.

18 THE COURT: All right. So then if I -- if and when
19 we get the consent from the UAW, that is no longer an issue.

20 MS. LENNOX: Correct, Your Honor.

21 THE COURT: All right. Now I do have the power, of
22 course, to manage my own docket. So on the matter that is
23 before me, you're to agree upon a mutually satisfactory
24 briefing schedule for determining both of what I called the
25 1(a) and 1(b) issues. In your briefs, I want you particularly

1 to focus on the extent to which the controversy before you,
2 which is now pending in the Eastern District of Michigan or
3 which has been fleshed out most in the Eastern District of
4 Michigan, requires me to make -- requires a judge -- me, if New
5 GM is right; Judge Cohn, if the UAW is right -- to construe or
6 enforce one or more documents that were subject to the
7 exclusive jurisdiction provisions of the 363 sale order that
8 was entered into in July 2009 or any other order that I
9 entered. Now it's my general understanding, subject to your
10 rights to be heard, that there may be an issue of both
11 contractual interpretation and order interpretation. But
12 because when I read the papers in preparation for this call, I
13 only each side's view of the world on one issue and you hadn't
14 completed briefing, I don't know if my understanding is right
15 or not. You are to tee up the issues as you see fit.

16 Mr. Bromley, I need you to tell me by --

17 MR. BROMLEY: Your Honor, can I interrupt you for one
18 second? I apologize.

19 THE COURT: Yes. Go ahead.

20 MR. BROMLEY: I have an answer to this question that
21 you're about to ask. We just asked -- we do consent to you
22 contacting Judge Cohn and we will cooperate on delaying that
23 schedule.

24 THE COURT: Okay. Well, what I'm going to encourage
25 Judge Cohn to do, assuming he's amenable, is to let me do my

1 job and decide whether this is something where I have exclusive
2 jurisdiction and to ask him to cut me some slack on the
3 scheduling. And I'll put it appropriately, of course, but the
4 idea is that neither he nor I be fighting with each other in
5 terms of a jurisdictional battle. I got to tell you, in ten
6 years as a bankruptcy judge, I've never had a battle with
7 another federal judge and I'm sure this is going to be no
8 different. But obviously, I got to discuss it with him.

9 So, as you get off the phone, I want you to work up a
10 schedule for teeing this up for judicial determination in a way
11 that satisfactorily meets both of your needs. Focus on the
12 discovery front on (a) whether either sides wants or needs
13 discovery on what I'll call the 1(a) and 1(b) issues; and,
14 secondly, whether since the merits, if you can't settle, are
15 going to have to be determined somewhere anyhow, whether you
16 might as well get to work on any discovery associated with that
17 portion., it appearing to me that the discovery will be
18 substantially the same whether it's decided in the Southern
19 District of New York or in the Eastern District of Michigan.

20 Anything else, anybody?

21 MS. LENNOX: Not from us, Your Honor.

22 MR. BROMLEY: Your Honor, just one question to --
23 this is Jim Bromley. So for the time being, the existing
24 objection deadline of the 2nd and the hearing date of the 9th
25 are extended out without a date pending the briefs of the

1 parties and the approval of the Court of a new briefing
2 schedule. Is that --

3 THE COURT: Are you talking about deadlines before
4 me?

5 MR. BROMLEY: Yes, Your Honor.

6 THE COURT: Yes. Anything that I have the power to
7 control, I'm putting in abeyance subject to being papered in a
8 new superseding scheduling order.

9 MR. BROMLEY: Thank you, Your Honor. That's what I
10 assumed. I just wanted to confirm.

11 THE COURT: But I am not, in this call especially,
12 changing Judge Cohn's schedules. I think I need to talk to him
13 about that.

14 (Pause)

15 THE COURT: And I propose to do that as soon as I get
16 off the phone here.

17 MS. LENNOX: Thank you, Your Honor.

18 THE COURT: Okay.

19 MR. BROMLEY: Thank you, Your Honor. We appreciate
20 the conference.

21 THE COURT: Very well. Have a good day.

22 MS. LENNOX: Thank you very much.

23 THE COURT: Right. We're adjourned.

24 (Whereupon these proceedings were concluded at 3:46 p.m.)
25

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Lisa Bar-Leib

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Date: November 1, 2010